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भारत निर्वाचन आयोग
अधिसूचना

नई दिल्ली, 4 नवम्बर, 1999

आ.अ. 165(अ).—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में निर्वाचन आयोग वर्ष 1998 की निर्वाचन अर्जी संख्या 4 में मध्य प्रदेश उच्च न्यायालय, ग्वालियर के तारीख 18 अगस्त, 1999 के आदेश को एतद्वारा प्रकाशित करता है।

(आदेश अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/म.प्र.-लो.स./ (4/98)/99]

आदेश से
एल.एच. फारुकी, सचिव

ELECTION COMMISSION OF INDIA NOTIFICATION

New Delhi, the 4th November, 1999

O.N. 165(E).—In pursuance of Section 106 of the representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the order of the High Court of Madhya Pradesh, Gwalior dated 18th August, 1999 in Election Petition No. 4 of 1998.

ELECTION PETITION NO. 4/1998

Jai Bhansingh Pawaiya s/o Shri Balwant Singh Pawaiya

v.

Shri Madhavrao s/o Shri Jiwajirao Scindia and others

Present

Hon'ble S.P. Srivastava, J.,

Shri T.C. Singhal, Advocate for the petitioner

Shri R.D Jain, Advocate for the respondent No. 1

ORDER

I.A. NO. 864/99 :

(1) This is an application filed by the respondent No. 1 seeking dismissal of the election petition asserting that the petitioner was required to present the election petition in English language only and since it has been filed in Hindi language, it was not in accordance with law, the election petition deserved to be dismissed.

(2) On 5-2-1999, a learned single Judge of this Court to whom the election petition stood assigned under section 86(2) of the Representation of the People Act, 1951, after hearing the counsel for the contesting respondent had granted time to the counsel for the petitioner as prayed for to file the objections.

(3) A reply to the aforesaid application containing the objections was filed on 10-3-1999 asserting that there was no provision in the Representation of the People Act and the Rules framed thereunder requiring that an election

petition should be filed in any particular language. It was further asserted that in the absence of any provision in the Act or rules, the non-compliance of rule 2(b) of the High Court Rules could not be a ground for the dismissal of the election petition. Reliance was placed in this connection on an order passed in Election Petition No. 9 of the 1980 (*Devilal s/o Shriram Khadav v. Kinkar Narmada Prasad and others*) decided by a learned single Judge of this Court at Indore Bench on 21-2-1981.

(4) Since the learned single Judge who had passed the order dated 5-2-1999 has demitted the office, under a fresh order of assignment the election petition stands assigned to me.

(5) The learned counsel for the parties were heard on this application before proceeding further with the petition on 30-7-1999.

(6) The provisions contained in section 87(1) of the Representation of the People Act, 1951, stipulate that subject to the provisions of the said Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908.

(7) However, section 4 of the Civil Procedure Code, 1908, provides as follows :

“4. Savings.—(1) In the absence of any specific provision to the contrary nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form, of procedure prescribed, by or under any other law for the time being in force.”
(2)”

(8) In exercise of the powers conferred by Article 225 of the Constitution of India and all other powers including those envisaged under the notification issued by the Chief Justice under section 51 of the State Reorganisation Act, 1956, the High Court of Madhya Pradesh had framed, the rules relating to the Election Petitions presented before it as provided under the provisions of the Representation of the People Act, 1951. These Rules were published in the Madhya Pradesh Gazette Extraordinary dated 22-2-1967. Rules 2 of the aforesaid Rules provides as under :

“2. Every Election petition shall be—

(a) typewritten or printed fairly and legibly on white foolscap size paper of reasonable quality, one side of the paper only being used, leaving a quarter margin on the left and at least 1/2 inches open space on the top and bottom of each sheet;

(b) Written in the English language, numbering separately the paragraph thereof;

(c) Couched in proper language, and in conformity with section 81, 82 and 83 of the Representation of the People Act, 1951.”

(9) Article 329 sub-clause (b) of the Constitution of India read with the provisions of the Representation of the People Act, 1951, as contained in sections 80 and 87 of the said Act, provides as follows :

“329. Bar to interference by courts in electoral matters,—

(a)

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature”.

“Section 80.—Election petitions.—No election shall be called in question except by an election petition presented in accordance with the provisions of Part VI of the said Act.”

“Section 87.—Procedure before the High Court.—(1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits :

... ..
(2)”

(10) It is, therefore, obvious that no election to either the Parliament or the State Legislature can be called in question except by an election petition presented in such manner as may be provided for, by or under any law made by the appropriate legislature. Since no procedure for presenting an election petition to the High Court has been provided by the Parliament in Part VI of the Representation of the People Act, 1951, though section 80 of the Act comprised in that part prohibits that no election petition unless presented in accordance with the provisions of Part VI of the Act, shall be called in question, it was open to the High Court to frame the Rules to discharge its constitutional obligation and statutory duty, namely, trial of the election petitions filed before it by the election petitioners.

(11) In the aforesaid situation, under the Rules framed by the High Court to which a reference has been made hereinabove, the presentation of the election petition stands regulated.

(12) The right to challenge an election is a special right conferred under a self-contained special law and is circumscribed by its provisions. As clarified by the Apex

Court in its decision in the case of **Satya Narain v. Dhruja Ram and others**, reported in AIR 1974 SC 1185, an election petition cannot be equated with a plaint in a civil suit. An election petition challenging the election of a successful candidate must strictly conform to the requirements of the law.

(13) The first question which arises for consideration at this stage is as to whether the election petition presented in the Hindi language without complying with the requirements as envisaged under rule 2 of the Rules framed by the High Court relating to election petitions referred to hereinabove, is entertainable.

(14) It may however be noticed that vide the notification dated 18-9-1971 in exercise of the powers conferred by clause (2) of Article 348 of the Constitution of India, the Governor of Madhya Pradesh with the previous consent of the President of India, had authorised the use of Hindi language in all proceedings of the High Court other than the decrees, orders and judgments of the High Court, subject to the following conditions :

- “(1) If any Bench of the High Court so desires, specific orders for translating into English, the affidavits, statements and documents in Hindi shall be passed; and
- (2) If any judgment contains extracts from pleadings, statements and documents, etc., in Hindi, it shall be accompanied by translation of the same in English language.”

It was further provided that for the aforesaid purpose, use of Hindi shall be optional and if the parties so desire, they may continue to use English language as usual.”

15. Article 348(1)(a) of the constitution of India provides that all proceedings in the Supreme Court and in every High Court, shall be in the English language.

16. In the present case, the objection raised by the respondent no. 1 is with reference to the statutory provisions contained in the separate rules regulating the presentation of the election petition framed in exercise of the jurisdiction envisaged under Article 225 of the constitution of India to carry out the objects underlying the provisions relating to the “prescribed manner” as contemplated under Article 329(b) of the Constitution of India read with the provisions of the Representation of the People Act, 1951.

17. It may be noticed that rule 2 of Section I Chapter IV of the rules framed by the High Court provides as follows :

“2. PRESENTATION OF APPEALS AND APPLICATIONS

2. Applications to the High Court shall, save where it is provided to the contrary in these rules, be by a petition—

- (i) written in the English language;

- (ii) neatly typed in thick paper of fool, scap size with a margin of two inches, only one side of the paper being used;

(iii)

(iv)

(v)

18. From what has been indicated above, it is apparent that the rules relating to the presentation of appeals and applications as contained in Section I Chapter IV of the rules deal with the matters other than the matters relating to election petitions, the rules in respect whereof have been framed separately vide the notification dated 21-2-1967 contained in Section II Chapter VII which specifically provide that the said rules related to the election petition presented under the Representation of the People Act, 1951.

19. In the notification dated 18-9-1971 issued in the exercise of the powers envisaged under Article 348 (2) of the Constitution of India, it has been provided that the use of Hindi language in all proceedings of the High Court other than decrees, orders and judgments of the High Court was authorised subject to certain conditions.

20. The expression “all proceedings of the High Court” as used in the aforesaid notification is of a general character and in my considered opinion it has to be taken as confined to the proceedings referred to in rule 2 of Section I Chapter IV of the Rules framed by the High Court that is to say the presentation of the appeals and applications and not the special rules framed by the High Court for a specific purpose to carry out the object underlying the provisions contained in the Representation of the People Act, 1951, which rules had come into effect with the notification dated 21-2-1967 referred to hereinabove.

21. I am further of the opinion that the provisions contained in Article 348(2) of the Constitution of India of Chapter III have to be interpreted in such a manner that the object underlying the provisions contained in Article 329(b) of the Constitution of India as well as sections 80 and 87 of the Representation of the People Act, 1951, read with Article 225 of the Constitution of India is not defeated in any manner. The provisions contained in Article 329(b) of the Constitution of India specifically provide that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

(Emphasis supplied)

22. The statutory provisions regulating the trial of an election petition for questioning an election of either House of Parliament or either House of the Legislature of

a State have to be construed strictly ensuring that it must conform to the requirements of the law.

23. As has already been noticed hereinabove, the right to challenge an election is a special right conferred under a special law as apparent from the decision of the Apex Court in the case of Satya Narain (supra).

24. It cannot be lost sight of that no procedure for presenting an election petition to the High Court had been provided by the Parliament in Part VI of the Representation of the People Act, 1951 though section 80 of the said Act comprised in that part prohibits that no election petition unless presented in accordance with the provisions of Part VI of the Act, shall be called in question. When no manner for presenting an election petition to the High Court is prescribed by that Statute or the rules framed thereunder then it was obviously open to the High Court to frame appropriate rules to discharge its constitutional obligation and statutory duty in regard to the trial of the election petitions filed before it by election petitioners as it cannot refuse to entertain the same on the ground that no procedure for presenting them before it had been prescribed by the appropriate Legislature. Since an election petition has to be presented only to the High Court, it is for the High Court to regulate the presentation and trial of the election petition.

25. The Special Rules framed by the High Court, in the circumstances, taking into account of the implications arising under Article 329(b) of the Constitution of India read with section 80 of the Representation of the People Act, 1951, relating to election petitions prescribing the manner for presentation of the election petition by necessary implication stand clothed with such a statutory character which could not be deemed to have been affected by an order relating to authorisation contemplated under Article 348(2) of the Constitution of India so as to take away statutory rigour of the Rules prescribing a requirement of an election petition to be written in English language, numbering separately the paragraphs thereof as provided in rule 2 of the aforesaid Rules relating to election petitions.

26. A Division Bench of this Court in its decision in the case of Bhagwati Prasad Singhal v. M. P. High Court, Reported in 1988 J.L.J. 367, had clarified that the Rules framed by the High Court under Article 225 of the Constitution of India must have primacy over others.

27. The Apex Court in its decision in the case of Krishan Chander v. Ram Lal, reported in AIR 1973 SC 2513, it had been pointed out that when there are specific rules under the Act which govern the election petitions, no other rules are applicable.

28. As has already been noticed hereinabove, the provisions contained in section 87 of the Representation of the People Act, 1951, mandates that subject to the provisions of the said Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the

procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits. The procedure provided under the aforesaid Code includes the manner regulating the presentation of a plaint, appeal, etc., Section 4 of the said Code however saves any special form of procedure prescribed, by or under any other law for the time being in force. Obviously, therefore, the procedure prescribed under the Civil Procedure Code, 1908, regulating the presentation stands superseded by the special procedure provided by the High Court in the special rules relating to the manner of presentation which rules have been framed in the exercise of the jurisdiction envisaged under Article 225 of the Constitution of India.

29. Our Constitution is structured with a wealth of influential and choice words, measured phrases and expressions, the real meaning and message of which are sometimes missed and on many occasions are hidden or unforeseen. However, the implications, relevance, significance, spirit and core of these words have to be taken into account.

30. Taking into consideration the implications arising under Articles 329(b) and 225 of the Constitution of India and sections 80 and 87 of the Representation of the People Act, 1951, as well as the implications arising under the authorisation provided vide the notification dated 18-9-1971 issued in exercise of the powers contemplated under Article 348(2) of the Constitution of India, I am of the considered opinion that violation of the special law regulating the election petitions of rules 2(b) of the Rules contained in Section II Chapter VII, framed by the High Court relating to election petitions is fatal and renders the present election petition not entertainable.

31. The learned counsel for the petitioner in support of his objections to the aforesaid application filed by the respondent No. 1 has placed reliance upon an unreported decision of a learned single Judge of this Court at Indore Bench dated 21-2-1981 disposing of I.A. No. 14 of 1980 filed in the Election Petition No. 9 of 1980 (Devilal s/o Shriram Khadav v. Kinkar Narmada Prasad and others) whereunder the said application filed by the respondent No. 1 in that case for dismissing the election petition on the ground that the petition had not been filed in the English language as required by rule 2(b) of the Rules relating to the election petitions made by the High Court, was rejected.

32. A perusal of the aforesaid order indicates that the application has been rejected observing that in the absence of any provision in the Act or the Rules made under the Representation of the People Act, non-compliance with the rule 2(b) of the Rules relating to the election petitions made by the High Court could not be a ground for the dismissal of the petition under section 86 of the said Act. It was further observed that it was not the case of the respondent No. 1 who had moved the application that he was not conversant with the Hindi, language in which the petition had been written noticing

that the said respondent had himself filed I.A. Nos. 10, 11, 12 and 13 of 1980, which were written in the Hindi language. It was in such circumstances that the learned single Judge finding that it was not necessary to direct the petitioner to file a translation of the petition in English language had rejected the said application.

33. A perusal of the aforesaid order further indicates that the only question which had been considered by the learned single Judge was as to whether an election petition written in English language was required to be dismissed under section 86 of the Representation of the People Act, 1951. It had however been observed that the counsel for the respondent No. 1 was unable to point out any provision of the Act or the Rules made under the aforesaid Act requiring the petition to be written in a particular language.

34. It may be noticed that although like cases should be decided alike but this principle is not an absolute rule nor of universal application. It does admit exceptions. Where there is no discussion regarding applicability of the relevant statutory provisions and the decision has been reached by a Bench in the absence of knowledge of a decision binding on it or a statute and in either case it is shown that had the Court had the said material before it, it must have reached a contrary decision, it is clearly a case of a decision *per incuriam* which has no binding effect. This principle does not extend to a case where if different arguments had been placed before the said Bench or a different material had been placed before it, it might have reached a different conclusion.

35. It cannot be lost sight of that it is not everything in a judgment which is binding but it is the ratio decidendi of the decision, that is the principle upon which the case is decided and for this reason it is important to analyse and isolate from it the ratio decidendi. Even where the facts appear to be identical, it is not obligatory to draw the same inference as drawn in the earlier case.

36. As a matter of fact, the Apex Court in its decision had observed in the case of *State of Orissa v. Sudhanshu Sekhar Misra*, reported in AIR 1968 SC 647, rendered by a Constitution Bench, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It was further clarified that a case is only an authority for what it actually decides. It was further indicated that it is not a profitable task to extract a sentence here and there from a judgment and to build upon it.

37. The order disposing of I.A. No. 14 of 1980 referred to hereinabove, does not take notice of the statutory provisions and the implications to which a reference has already been made hereinabove. In fact, in the order itself it had been pointed out by the learned single Judge that the counsel for the applicant had not

been able to point out any statutory provision in support of the application apart from rule 2(b) of the Rules relating to the election petitions framed by the High Court. Further, the only question considered in the aforesaid order was as to whether in that situation, dismissal of the election petition under section 86 of the Representation of the People Act, was called for. The learned single Judge being of the view that the provisions contained in section 86 of the said Act having been complied with no case for dismissal of the election petition under that provision had been made out. The case in hand is quite different as the controversy is not confined to the applicability of section 86 of the Act alone.

38. In the aforesaid circumstances, the aforesaid order dated 21-2-1981, disposing of I.A. No. 14 of 1980 in the case of *Devilal s/o Shriram Khadav* (supra) cannot come to the rescue of the petitioner.

39. It must not be lost sight of and it is needless to emphasise that the question in regard to the entertainability of an election petition with the presentation whereof a specific remedy is sought to be availed of ought to be ascertained primarily at the threshold. This is also the legislative intent running behind the provisions contained in sections 80, 81, 82, 83, 84, 86(1), 87 and 117 of the Representation of the People Act, 1951. The provision contained in Article 329(b) of the Constitution of India also lay emphasis on the manner of presentation of an election petition.

40. In the aforesaid circumstances, in case it is established that an election petition contemplated under the provisions of the aforesaid Act has not been presented in the manner prescribed, it cannot be treated as such an election petition at all which may require a trial.

41. In view of what has been indicated hereinabove, I have not hesitation in holding that the present election petition as framed is not at all entertainable. Since even the limitation for filing a fresh election petition in accordance with law and in the manner prescribed has also run out, it is not possible or permissible to permit the petitioner to remove the defect in the presentation of the election petition, the present election petition in the circumstances is not at all triable.

42. In view of my aforesaid conclusions, the election petition is dismissed as not entertainable and triable with the result that the present proceedings shall stand terminated.

43. Ordered accordingly.

Sd/-

S.P. SRIVASTAVA, Judge

Election Judge

18-8-1999

[No. 82/MP-HP/(4/98)/99]

By Order,

L.H. FARUQI, Secy.

